DICK RECKMANN, ET AL.

IBLA 71-313 Decided November 28, 1972

Appeal from decision (Oregon 5-71-2) of the Area Manager of the Prineville, Oregon, District Office of the Bureau of Land Management, rejecting in part an application for a grazing lease.

Affirmed.

Grazing Leases: Applications--Grazing Leases: Apportionment of Land--Grazing Leases: Preference Right Applicants

> Where an award of public land embraced in two conflicting preference right applications is based upon the factors enunciated in 43 CFR 4121.2-1, it will not be disturbed absent a showing that the award is inequitable.

APPEARANCES: M. D. Van Valkenburgh, Esq., of Heisler & Van Valkenburgh, The Dalles, Oregon, for the appellants.

OPINION BY MR. FISHMAN

Dick and Maudine Reckmann have appealed to the Secretary of the Interior from a decision of the Prineville, Oregon, District Office, Bureau of Land Management, dated March 3, 1971, which rejected in part the application of the appellants for a grazing lease, sought under section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970).

The decision of the District Office was an adjudication of two conflicting applications. One of the applications was filed by the appellants. The other application was filed by John P. Reckmann. Portions of each application were approved for separate parcels of public lands which presented no conflicts; however, both applications applied for an identical parcel of public land. All of this parcel was awarded to John P. Reckmann.

The public land in question was historically leased to Dick and Henry Reckmann. The Bureau of Land Management cancelled their lease, which by its terms would have expired in May of 1973, for the reason that they lost control of certain non-federal lands that had been

recognized as the base for their grazing lease. The appellants and John P. Reckmann now control contiguous non-federal lands upon which both base their respective preference rights for a grazing lease to the public land in question.

In explaining the circumstances surrounding the change in control of non-federal lands referred to above, the Area Manager, in the decision below, stated:

> Historically, the public lands in question were leased to Dick and Henry Reckmann, a partnership. The partnership was dissolved at the end of 1970. This action made it necessary for the Bureau of Land Management to cancel the grazing lease issued to the partnership. (43 CFR 4125.1-1(i)(4)).

Appellants contend that the operation of Dick and Henry Reckmann was not in fact a partnership. Appellants further contend, in the alternative, that it was error to cancel the grazing lease issued to Dick and Henry Reckmann because "termination of a partnership * * * did not take place."

The exact association between Dick and Henry Reckmann is not made clear from the record; nor do the appellants disclose the nature of the association. In any event, the lease issued to Dick and Henry Reckmann was cancelled pursuant to 43 CFR 4125.1-1(i) which provides:

> The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.
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> (4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal Lands that have been recognized as the basis for a grazing lease.

The lease issued to Dick and Henry Reckmann was cancelled for the reason that they lost control of the non-federal lands which had been recognized as the base for their grazing lease. It is, therefore, immaterial whether the nature of their association was, or was not, a partnership.

Appellants next argue that if the decision is allowed to stand, a portion of their property would be isolated, "and therefore [it]

would be detrimental to the best use of that property and the adjacent Bureau lands."

The action of the Area Manager in awarding the public lands in issue to John P. Reckmann was taken pursuant to 43 CFR 4121.2-1(d)(2) which provides:

> The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical [sic] use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application (where access is not presently available), and (vii) other land use requirements.

The area of conflict lies within the Deschutes Canyon on the east side of the Deschutes River. The appellants' ranch is several miles to the east of the river on a plateau; however, appellants control approximately 70 acres of fenced preference right land contiguous to the area of conflicting applications. John P. Reckmann on the other hand controls approximately 1300 acres of preference right land contiguous to the area of conflict. The public land in question covers approximately 1067 acres of which 460 acres are suitable for livestock grazing. It appears from the record that the area receives high recreational use and that proper range management would not be facilitated by dividing the area. The record further discloses that a grazing rotation system was needed to obtain proper range management because of the deteriorated range condition along the banks of the river and the high recreational use of the area. The 70 acres of preference land controlled by appellants were considered insufficient to develop a grazing rotation system in the area. The Area Manager found that proper use of the preference lands of John P. Reckmann would be facilitated by approval of his application for a grazing lease to the public land in issue.

The decision of the Area Manager is both consistent with sound range management and in accordance with the regulatory criteria of 43 CFR 4121.2-1(d)(2). This is particularly true in view of the fact the appellants have not demonstrated that they can provide a grazing rotation system, which the Area Manager has determined to be necessary for proper management of the land in dispute. Appellants have neither demonstrated a greater need for the public land than John P. Reckmann, nor shown that the range could be managed better if the land were awarded to them. Under these circumstances the decision of the Area

Manager will not be disturbed. Thomas W. Dixon, et al., 1 IBLA 199 (1970). See Winchester Land and Cattle Company, et al., 65 I.D. 148 (1958). Cf. Victor Powers and Florence Sellers, 5 IBLA 197 (1972).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals from the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman, Member

We concur:

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Anne Poindexter Lewis, Member

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Joseph W. Goss, Member